

## **REMARKS**

### **Claim Amendments**

The claims of this application have been amended to define an antioxidant blend comprising Emblicanin A, Emblicanin B, Pedunculagin and Punigluconin and 0.001% to 0.01% by weight of Rutin. These claims are not identical to the claims of copending application No. 10/616,494 in that a formulating temperature is not recited.

New claims 11-13 find support at the following locations in the specification, respectively, page 3, line 5; page 9, lines 6-7 and 20-30; page 4, lines 16-17 and page 4, lines 16-23. The dependent claims have been amended for clarity.

### **Rejection Under 35 USC §102 (b)**

Ghosal et al. does not anticipate the amended claims or the new claims in that the feature of using 0.001% to 0.01% by weight of Rutin is not shown by Ghosal et al., such that the rejection under 35 USC §102 (b) should be withdrawn.

### **Rejection Under 35 USC §103 based on US patent 6,649,150**

The rejection under 35 USC § 103, based on US patent 6,649,150, should also be withdrawn. The claimed subject matter in the '150 patent and in this application is assigned to the same assignees and was under the same obligation of assignment at the time the inventions were made. Therefore, the '150 is not a prior art reference under 35 USC §103 to the claims in this application.

### **Obviousness Type-Double Patenting Rejection**

Claims 1-34 and 5-9 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 6, 8-35 of copending application 10/616,494. Positive actions to address this rejection at this time would be premature, since no allowable subject matter is indicated amongst the claims 1-34. If necessary, applicants will attend to this rejection after allowable matter is identified.

**Rejection Under 35 USC §103(a) based on Ghosal '167 and Vatter '500**

Claims 1-9 are rejected under 35 USC§ 103(a) based on Ghosal '167 and Vatter '500. Applicants have discovered Rutin within antioxidant formulations causes discoloration of the formulation and have provided new formulations essentially free of such compounds. The Examiner considers the amount of Rutin specified (less than 0.01%) to be within the range of 0 to 15% Rutin specified by Ghosal et al. (US 6,362,167). Applicants maintain that the teachings of Ghosal et al., when considered as a whole, provide no direction how to obtain antioxidant blends having levels of Rutin within the range of 0.001 to 0.01 wt %. The reference teaches the use of 5-15% by weight of Rutin at column 4, line 40 of US 6,362,167 (Ghosal) and on column 2, line 43 of US 6,124,268 (also by Ghosal et al.). Although the concentration of Rutin in claim 3 of US 6,362,167 recites 0-15%, the disclosure of '167 is not enabling with respect to formulations with levels of Rutin at 0% or below 5%. To obtain such levels, special sources of emblica extracts (e.g., certain geographic locations at certain seasons) need to be used to provide low levels of flavinoids (see col. 5, lines 36-46 of the '150 patent). Alternatively, these extracts can be treated to remove black specs, precursors thereto and/or polymeric tannins , typically by filtration. There is no direction within the disclosure of Ghosal '167 that emblica extracts with such purity are available or that emblica extracts can be processed to achieve such purity. In addition, there is no direction to prepare the extracts by the procedures recited in claims 13 and 14.

Vatter et al. (US 6,475,500) makes no mention of the antioxidants found in the claimed blend and provides no indication that the antioxidants employed suffer from discoloration due to flavonoids. The combined teachings of Vatter and Ghosal '167 would not lead one skilled in the art to seek, develop, manufacture and/or use high purity emblica extracts.

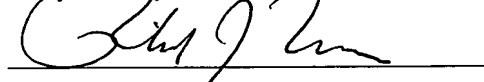
Vatter et al. is relied on for its teaching of anhydrous carriers. It is alleged Vatter et al would motivate one skilled in the art to replace the aqueous carried disclosed by Ghosal et al. with an anhydrous carrier. However, Vatter does not specifically disclose any antioxidants derived from plant extracts. Furthermore, Vatter et al. does not disclose any of the four antioxidants within the composition claimed and provides no indication

any of the specific components recited in applicant's claims would be compatible in an anhydrous carrier. Applicants maintain that one skilled in the art would not find it obvious that all four of the named tannins, which are derived from a water soluble extract, would be compatible within an anhydrous carrier and could be delivered by such a carrier in view of the teachings within the references cited.

Applicants also maintain that no motivation has been provided to combine the compounds of Ghosal with the anhydrous composition of Vatter in such a way as to arrive at the instant invention. The mere fact that these components could be combined to arrive at the claimed invention is insufficient. The prior art must convincingly suggest to one of ordinary skill in the art the desirability of combining the components. See *In re Laskowski*, 10 U.S.P.Q.2d 1397 (Fed. Cir. 1989). Neither Ghosal nor Vatter offers any suggestion which would motivate one of ordinary skill in the art to formulate the claimed antioxidant blend. Accordingly, it is respectfully requested that the rejection be withdrawn.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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